

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEW HAMPSHIRE

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STEPHEN L. D'ANGELO,	*	
	*	
v.	*	CASE NO. 12-CV-411-SM
	*	
NEW HAMPSHIRE SUPREME COURT,	*	
BRIAN GERMAINE, ESQ.,	*	
	*	
*****	*	
	*	

DEFENDANT BRIAN GERMAINE'S MOTION TO DISMISS

Defendant Brian Germaine, Esq., by and through his attorneys, Preti Flaherty Beliveau & Pachios, PLLP, respectfully moves this Court to dismiss Plaintiff's Complaint, because Defendant Germaine has immunity against the claims, and because the Complaint fails to state a claim for relief.

1. Plaintiff brings claims against Defendant Germaine for alleged violations of Plaintiff's substantive due process rights (Count IV), breach of fiduciary duty (Count V), breach of contract (Count VI), negligence (Count VII), misrepresentation (Count VIII), and reckless infliction of emotional distress (Count IX) all arising out of Attorney Germaine's appointment as Commissioner by the Derry Family Court in In the Matter of Janice D'Angelo and Stephen D'Angelo, case no. 622-2004-DM-00276.¹

2. As found in the Report and Recommendation of the Magistrate Judge, issued on November 8, 2012, (see ECF Dkt #8) under the Rooker-Feldman doctrine, this Court lacks

¹ Counts I through III only apply to the New Hampshire Supreme Court, and therefore are not addressed in this Motion.

subject matter jurisdiction to adjudicate this case and the Complaint should be dismissed on that basis.

3. Plaintiff's claims against Attorney Germaine should be dismissed because Attorney Germaine was a court-appointed Commissioner, and therefore is protected by absolute quasi-judicial immunity.

4. Plaintiff's claims against Attorney Germaine should be dismissed because the Complaint fails to plead sufficient facts necessary to state a claim upon which relief can be granted.

5. A memorandum of law is attached.

6. Concurrence is not required because this is a potentially dispositive motion.

WHEREFORE, for the reasons stated herein, Defendant Germaine respectfully requests that the court order as follows:

- A. Dismiss the Complaint in its entirety;
- B. Order such other relief as just and necessary.

Respectfully submitted,

ATTORNEYS FOR DEFENDANT
BRIAN GERMAINE, ESQ.,

By His Attorneys,

PRETI FLAHERTY BELIVEAU & PACHIOS
PLLP

/s/ William C. Saturley

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Certificate of Service

I hereby certify that on 26th day of November, I served the foregoing *Defendant Brian Germaine's Motion to Dismiss* to all parties of record via the Court's ECF system and mailed a copy to Stephen L. D'Angelo at 401 Andover Street, Suite 202, North Andover, MA 01845.

/s/ William H. Whitney

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***** *

CERTIFICATE OF CONCURRENCE

Pursuant to Local Rule 7.1(c), concurrence is not required because this is a potentially dispositive motion.

Dated: November 26, 2012

By: /s/ William H. Whitney
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